

**CITY OF MIAMI BEACH  
COMMISSION ITEM SUMMARY**



**Condensed Title:**

A Resolution Approving A Concession Agreement Between The City And Production Sud, Inc., For The Management and Operation Of An Antique and Collectibles Market On Lincoln Road, Between Pennsylvania and Washington Avenues, With An Initial Term Of One Year (October 1, 2004 to September 30, 2005), With An Option To Renew, At The City's Sole Discretion, For An Additional One Year Term.

**Issue:**

Shall the Mayor and City Commission approve the Agreement with Production Sud for the Lincoln Road Antique and Collectibles Market?

**Item Summary/Recommendation:**

On July 31, 2002, the Mayor and City Commission approved the issuance of RFP 25-02/03 for the operation and management of an antique and collectibles market on Lincoln Road. Said RFP was issued, and proposals received, and after an evaluation/selection process, recommendations were forwarded to the Mayor and City Commission. On July 30, 2003, the Mayor and City Commission approved the selection of Production Sud, Inc. and authorized the Administration to negotiate the concession agreement.

The Administration and Production Sud have negotiated and agreement has been reached on the Concession Agreement for Lincoln Road Production Sud has agreed to pay the City a annual minimum guaranteed amount, equal to 100% of its prior fiscal year (2003) gross receipts, or 12.5% percent of its gross receipts, whichever is greater. If 2004 revenues exceed 2003 revenues, the payments will increase as follows; 1) if revenues exceed 110% of prior year revenues, an additional 2.5% of those revenues that exceed 100% through and including 120% of prior year revenues, will be remitted; and 2) if revenues exceed 120% of prior year revenues, an additional 2.5% of those revenues that exceed 120% of prior year revenues will also be remitted. A security deposit, equal to approximately one twelfth of the minimum guarantee amount, will be provided. The agreement has an initial term of one year (October 1, 2004 to September 30, 2005), with an option to renew, at the City's discretion, for an additional 1 year term.

The Administration recommends that the Mayor and City Commission adopt the Resolution.

**Advisory Board Recommendation:**

**Financial Information:**

Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 80px; height: 40px; margin: 0 auto;"></div> Finance Dept.	1			
	2			
	3			
	4			
	<b>Total</b>			

**City Clerk's Office Legislative Tracking:**

Christina Cuervo/Jose Damien

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
	<i>[Signature]</i>	<i>[Signature]</i>

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AGENDA ITEM R7H  
DATE 9-8-04

# CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139  
www.ci.miami-beach.fl.us



## COMMISSION MEMORANDUM

**To:** Mayor David Dermer and  
Members of the City Commission

**Date:** September 8, 2004

**From:** Jorge M. Gonzalez *JMG*  
City Manager

**Subject:** A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND PRODUCTION SUD, INC., FOR THE MANAGEMENT AND OPERATION OF AN ANTIQUE AND COLLECTIBLES MARKET IN THAT PORTION OF THE LINCOLN ROAD PUBLIC RIGHT-OF-WAY, BETWEEN WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, AND IN THAT PORTION OF THE DREXEL AVENUE RIGHT-OF-WAY, BETWEEN LINCOLN LANE SOUTH AND LINCOLN LANE NORTH; SAID AGREEMENT HAVING AN INITIAL TERM OF ONE (1) YEAR, COMMENCING ON OCTOBER 1, 2004, AND EXPIRING ON SEPTEMBER 30, 2005, WITH AN OPTION TO RENEW, AT THE CITY'S SOLE DISCRETION, FOR AN ADDITIONAL ONE YEAR TERM, SUBJECT TO THE TERMS PROVIDED IN THE AGREEMENT

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

### ANALYSIS

On July 31, 2002, the Mayor and City Commission adopted Resolution No. 2002-24947, authorizing the Administration to issue a Request for Proposals (RFP) for the management and operation of an antique and collectibles market on Lincoln Road. On March 3, 2003, RFP No. 25-02/03 was issued, responses were received and after an evaluation and selection process, recommendations were forwarded to the Mayor and City Commission. On July 30, 2003, the Mayor and City Commission adopted Resolution No. 2003-25269, authorizing the Administration to enter into negotiations with Production Sud, Inc. (Concessionaire) for the operation and management of an antique and collectibles market on Lincoln Road.

The Administration has successfully negotiated the foregoing Concession Agreement with Production Sud, Inc., for the operation and management of the Lincoln Road Antique and Collectibles Market, in that portion of the public right-of-way known as Lincoln Road (between Washington Avenue and Pennsylvania Avenue) and in that portion of the Drexel Avenue right-of-way (between Lincoln Lane North and Lincoln Lane South). Said

Agreement has an initial term of one (1) year, with a commencement date of October 1, 2004, and an expiration date of September 30, 2005. The Agreement also provides for an option to renew for an additional one (1) year term, at the City's sole discretion.

1. Financial Remunerations to the City:

a. Percentage of Gross:

Production Sud has agreed to remit to the City, on a monthly basis, twelve and one half (12.5%) percent of its gross receipts. In the event that Production Sud's fiscal year 2004 revenues exceed the previous fiscal year (2003) revenues, Production Sud agrees to increase its payments to the City in accordance to the following scale:

- i. if revenues exceed 110% of prior (2003) fiscal year revenues, Production Sud shall remit to the City an additional 2.5% of those revenues that exceed 100% through and including 120% of the prior year revenues; and
- ii. if revenues exceed 120% of prior (2003) fiscal year revenues, Production Sud shall remit to the City an additional 2.5% of those revenues that exceed 120% of the prior year revenues to the City.


b. Minimum Guarantee (MG):

Production Sud has agreed to pay the City an annual financial remuneration to the City equal to the greater of either the aforementioned twelve and one half (12.5%) percent of its gross revenues, or a minimum guaranteed amount of \$31,000 (based on approximately 100% of Production Sud's actual fiscal year 2003 revenues remitted to City of \$31,720.50, via their respective Special Event Permits).

c. Security Deposit:

Production Sud will provide a security deposit, the amount of \$2,500, (an amount equal to approximately one twelfth (1/12th) of the Minimum Guarantee amount), based on the actual of revenues remitted to the City, via its Special Events Permit for fiscal year 2003).

The Administration recommends that the Mayor and City Commission approve the Concession Agreement by and between the City of Miami Beach and Production Sud, Inc. for the management and operation of the Lincoln Road Antique and Collectibles Market in that portion of the Lincoln Road Public Right-of-Way, between Washington Avenue and Pennsylvania Avenue and in that portion of the Drexel Avenue Right-of-Way between Lincoln Lane North and Lincoln Lane South; said Agreement commencing on October 1, 2004, and expiring on September 30, 2005, with an option to renew, at the City's sole discretion, for an additional one (1) year term, subject to the terms provided in the Agreement.

JMG\CMC\JD\rlr  


**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND PRODUCTION SUD, INC., FOR THE MANAGEMENT AND OPERATION OF AN ANTIQUE AND COLLECTIBLES MARKET IN THAT PORTION OF THE LINCOLN ROAD PUBLIC RIGHT-OF-WAY, BETWEEN WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, AND IN THAT PORTION OF THE DREXEL AVENUE RIGHT-OF-WAY, BETWEEN LINCOLN LANE SOUTH AND LINCOLN LANE NORTH; SAID AGREEMENT HAVING AN INITIAL TERM OF ONE (1) YEAR, COMMENCING ON OCTOBER 1, 2004, AND EXPIRING ON SEPTEMBER 30, 2005, WITH AN OPTION TO RENEW, AT THE CITY'S SOLE DISCRETION, FOR AN ADDITIONAL ONE YEAR TERM, SUBJECT TO THE TERMS PROVIDED IN THE AGREEMENT**

**WHEREAS**, on July 31, 2002, the Mayor and City Commission adopted Resolution No. 2002-24947, authorizing the Administration to issue a Request for Proposals (RFP) for the management and operation of an antique and collectibles market on Lincoln Road, Miami Beach, Florida; and

**WHEREAS**, on March 3, 2003, RFP No. 25-02/03 was issued, responses were received and evaluated, and recommendations were forwarded to the Mayor and City Commission; and

**WHEREAS**, on July 30, 2003, the Mayor and City Commission adopted Resolution No. 2003-25269, authorizing the Administration to enter into negotiations with Production Sud, Inc. (Concessionaire) for the operation and management of an antique and collectibles market on Lincoln Road; and

**WHEREAS**, the Administration has successfully negotiated the foregoing Concession Agreement with Production Sud, Inc., for the operation and management of the Lincoln Road Antique and Collectibles Market, in that portion of the public right-of-way known as Lincoln Road (between Washington Avenue and Pennsylvania Avenue) and in that portion of the Drexel Avenue right-of-way (between Lincoln Lane North and Lincoln Lane South), said Agreement commencing on October 1, 2004, and expiring on September 30, 2005, with an option to renew, at the City's sole discretion, for an additional one (1) year term.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City

Commission approve and authorize the Mayor and City Clerk to execute the attached Concession Agreement by and between the City Of Miami Beach and Production Sud, Inc., for the Management and Operation of the Lincoln Road Antique and Collectibles Market in that portion of the Lincoln Road Public Right-of-Way, between Washington Avenue and Pennsylvania Avenue and in that portion of the Drexel Avenue Right-of-Way between Lincoln Lane North and Lincoln Lane South; said Agreement commencing on October 1, 2004, and expiring on September 30, 2005, with an option to renew, at the City's sole discretion, for an additional one (1) year term, subject to the terms provided in the Agreement.

**PASSED AND ADOPTED this 8<sup>th</sup> day of September, 2004.**

**ATTEST:**

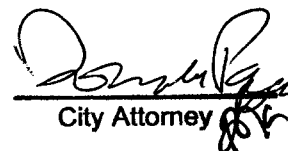

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR**

JMG:CMC:JD:rlr

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**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney  Date 8/30/04

**Production Sud, Inc.**

**Management and  
Operation Agreement  
for the  
Lincoln Road  
Antique & Collectibles  
Market**

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**CONCESSION AGREEMENT BETWEEN  
CITY OF MIAMI BEACH, FLORIDA AND  
PRODUCTIONS SUD, INC.  
FOR MANAGEMENT AND OPERATION OF THE  
LINCOLN ROAD ANTIQUE AND COLLECTIBLES MARKET  
PURSUANT TO REQUEST FOR PROPOSALS NO. 25-02/03**

THIS AGREEMENT made the 8th day of September, 2004, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (hereinafter called "City"), and **PRODUCTION SUD, INC.**, a corporation established pursuant to the laws of the State of Florida, with offices at 1360 Marseilles Drive, Miami Beach, Florida 33141 (hereinafter called "Concessionaire").

**WITNESSETH**

**WHEREAS**, on July 31, 2002, the Mayor and City Commission adopted Resolution No. 2002-24947, authorizing the Administration to issue a Request for Proposals (RFP) for the management and operation of an antique and collectibles market on Lincoln Road, Miami Beach, Florida; and

**WHEREAS**, on March 3, 2003, RFP No. 25-02/03 was issued, responses were received and evaluated, and recommendations were forwarded to the Mayor and City Commission; and

**WHEREAS**, on July 30, 2003, the Mayor and City Commission adopted Resolution No. 2003-25269, authorizing the Administration to enter into negotiations with Production Sud, Inc. (Concessionaire) for the operation and management of an antique and collectibles market on Lincoln Road; and

**WHEREAS**, the Administration has successfully negotiated the foregoing Concession Agreement with Production Sud, Inc., for the operation and management of the Lincoln Road Antique and Collectibles Market, on a portion of the public right-of-way known as Lincoln Road (between Washington Avenue and Pennsylvania Avenue) and on a portion of the Drexel Avenue right-of-way (between Lincoln Lane North and Lincoln Lane South), said Agreement commencing on October 1, 2004, and expiring on September 30, 2005, with an option to renew, at the City's sole discretion, for an additional one (1) year term.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the exclusive right to operate the following described concession within the Concession Area, as defined herein, in conformance with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

## SECTION 1. TERM.

- 1.1 This Agreement shall be for an initial term of one (1) year, commencing on **October 1, 2004** (the "Commencement Date"), and ending on **September 30, 2005**.
- 1.2 Provided that the Concessionaire is not in default under Section 13 hereof, and at the City's sole discretion, upon written notice from Concessionaire to the City, which notice shall be given no later than 90 days prior to the expiration of the initial term of the Agreement. The City may extend the term of this Agreement for an additional one (1) year period, commencing on **October 1, 2005**, and ending on **September 30, 2006**.

## SECTION 2. CONCESSION AREA.

- 2.0 The City hereby grants to the Concessionaire the exclusive right, during the term of this Agreement, to operate a concession for an open air street market, as described herein, in the following area(s) (hereinafter referred to collectively as the "Concession Area"), as more specifically delineated in Exhibits **2.1**, **2.2** and **2.3** herein:
- 2.1 Lincoln Road between Washington Avenue and Drexel Avenue.  
This Concession Area is limited to the public right-of-way bounded on the south by the southernmost line of the Lincoln Road right-of-way; bounded on the north by the northernmost line of the Lincoln Road right-of-way; bounded on the west by the easternmost edge of the sidewalk adjacent to and on the east side of Drexel Avenue; and bounded on the east by the westernmost edge of the sidewalk adjacent to and on the west side of Washington Avenue, attached hereto and incorporated as **Exhibit 2.1**.
- 2.2 Drexel Avenue between Lincoln Lane North and Lincoln Lane South.  
This Concession Area is limited to the public right-of-way bounded on the south by the northernmost line of the Lincoln Lane South right-of-way; bounded on the north by the southernmost line of the Lincoln Lane North right-of-way; bounded on the west by the easternmost edge of the sidewalk adjacent to and on the east side of Drexel Avenue; and bounded on the east by the westernmost edge of the sidewalk adjacent to and on the west side of Drexel Avenue, attached hereto and incorporated as **Exhibit 2.2**.
- 2.3 Lincoln Road between Drexel Avenue and Pennsylvania Avenue.  
This Concession Area is limited to the public right-of-way bounded on the south by the southernmost line of the Lincoln Road right-of-way; bounded on the north by the northernmost line of the Lincoln Road right-of-way; bounded on the west by the easternmost edge of the sidewalk adjacent to and on the east side of Pennsylvania Avenue; and bounded on the east by the westernmost edge of the sidewalk adjacent to and on the west side of Drexel Avenue, attached hereto and incorporated as **Exhibit 2.3**.
- 2.4 Notwithstanding the use of the Concession Area(s) granted to Concessionaire above, Concessionaire herein understands, agrees, and

acknowledges that the Concession Area, along with any and all other public right-of-way area(s) not specifically identified herein, are public and, as such, must remain available for the use and enjoyment of the general public whether or not the public chooses to purchase any of Concessionaire's goods, or otherwise partake of any of the services it provides. In the event that a member of the public is within a particular area of the Concession Area, Concessionaire agrees to allow for his/her continued peaceful enjoyment of said area.

The Concession Area does not include those portions of the public right-of-way where fountains, seating, or other public amenities or other uses authorized/licensed/permitted by the City are currently located or may be located in the future.

### SECTION 3. USE(S).

The Concessionaire is hereby authorized to conduct the following kind(s) of business(es) within the Concession Area, as provided below, all at its sole cost and expense:

- 3.1 Concessionaire shall operate and manage an open air street market, commonly known and referred to herein as the "Lincoln Road Antique and Collectibles Market" (the Market), which shall provide a venue for vendors to sell and/or provide the following (as each is more specifically defined in Section 3.2):

- a) Antiques;
- b) Vintage Goods; and
- c) Collectibles.

This shall also generally include the rental of booths, tents, tables, signs or space(s) (collectively the "facilities"), in conformance with the attached site plans (**Exhibits 2.1, 2.2 and 2.3**). The City herein approves the rental of the aforestated facilities, and the prices for same, as provided in Section 18.

3.1.1 Facilities Design:

The design, type, material, and color of any and all facilities, as defined above, shall be approved in writing by the City's Planning Department prior to the Commencement Date of this Agreement. A photo or photo(s) of City-approved facilities is incorporated herein as **Exhibit 3.1.1**. Thereafter, Concessionaire shall not change, alter, or modify said City-approved design, type, material and color of any facilities without the prior written consent of the City Manager or his designee, and, if so approved, an updated **Exhibit 3.1.1** will be made a part of and incorporated into this Agreement.

3.1.2 Placement of Facilities:

All respective facilities within the Concession Area shall be placed substantially in accordance with the attached site plans, herein approved by the City and attached hereto and incorporated as **Exhibits 2.1, 2.2 and 2.3** herein. Concessionaire shall not deviate from or alter the approved site plans without the prior written consent of the City Manager or his designee.

3.1.2.1 Compliance with American with Disabilities Act (ADA) and any other applicable accessibility standards:

Concessionaire agrees and acknowledges that during all periods when its Market is in operation, including set-up and break-down periods, it shall comply with ADA standards, Florida Accessibility Code standards, and any other applicable accessibility standards required by law, including the provisions of the City's "Special Events Disability Access Punch List", attached hereto and incorporated as **Exhibit 3.1.2.1** herein. Concessionaire's compliance with the provisions set forth in the attached **Exhibit 3.1.2.1**, includes, but shall not be limited to, any and all responsibilities associated with "Event Producer" as described therein.

3.1.2.2 The Concessionaire's responsibility to comply with the aforementioned provisions in Subsection 3.1.2.1 include, but are not limited to, ensuring that there is an accessible path of travel from the handicap designated parking spaces and public transportation stops within the boundary of, areas associated with, and entrances to, Lincoln Road. Concessionaire shall:

- a) maintain accessible path(s) of travel that permit the unobstructed access to the entryways of all buildings, facilities, elements and spaces along Lincoln Road;
- b) maintain an unobstructed accessible path of travel on both the north sidewalk and the south sidewalk of Lincoln Road; and
- c) maintain an unobstructed accessible path(s) of travel from the north walkway to the south walkway of Lincoln Road.

3.1.2.3 Notwithstanding the above, Concessionaire's responsibility to comply with the requirements of Subsections 3.1.2.1 and 3.1.2.2 shall be limited to those areas within the Concession Area as provided in **Subsections 2.1, 2.2 and 2.3** herein.

3.1.3

Set Up:

The set up of facilities to be placed within the Concession Area, substantially in accordance with the site plan(s) approved pursuant to **Exhibits 2.1, 2.2 and 2.3**, shall be in accordance with the days and hours of operation in Section 9. Placement of vendor facilities shall be in accordance with and shall not exceed the maximum numbers, set forth in **Exhibits 2.1, 2.2 and 2.3**, attached hereto and incorporated herein.

3.1.4

Public Right-of-Way:

The City and Concessionaire agree and acknowledge that the public's use of the public right-of way is a prime consideration and must be balanced accordingly with Concessionaire's proposed operations, as set forth herein. Accordingly, notwithstanding the site plans and maximum numbers (as provided for in the Set Up period) set forth in Subsection 3.1.3, Concessionaire further agrees that, notwithstanding its right to set up its maximum numbers, it will not alter or modify its site plans without the prior written consent of the City Manager or his designee.

Notwithstanding the preceding paragraph, City and Concessionaire may, from time to time, meet to review and, subject to City's prior written consent, revise the maximum numbers (as provided for in the Set-Up period) set forth in Subsection 3.1.3.

3.1.5

Interaction and Coordination with Other Lincoln Road Operations and Events:

Concessionaire agrees and understands that there are other businesses, establishments, operations and events which are ongoing, or may occur from time to time within, or in close proximity to the Concession Area. As such, Concessionaire agrees that it will use its best efforts to cooperate and coordinate with said businesses, establishments, operations and events so as to minimize the impact to the respective parties.

As this Subsection 3.1.5 relates to that certain Concession Agreement by and between the City and The Market Company, Inc., dated March 17, 2004, for the Management and Operation of the Lincoln Road Green Market, it shall be understood and agreed that:

- a) The Lincoln Road Antique and Collectibles Market shall have first priority use of the portion of the Concession Area, as defined in Subsection 2.1 herein, during such times as said Antique and Collectibles Market is operating.
- b) Should the Lincoln Road Green Market desire to utilize that portion of the Concession Area described in Subsection 2.1, it shall only be permitted to do so:
  - i. with Concessionaire's prior written approval; and
  - ii. only for as long as the Lincoln Road Green Market maintains the following longstanding vendors in said Area:
    - 1) Ivan Comas;
    - 2) Susana Garciga; and
    - 3) Emil Ciuraru.

In the event that one or more of the aforesated vendors ceases to operate in the Lincoln Road Green Market, The Market Company

shall not be allowed to replace the respective vendor(s) with another vendor(s) during the remaining term of the Lincoln Road Green Market Concession Agreement. To that end, in the event that all of the aforementioned vendors cease to operate in the Lincoln Road Green Market, The Market Company's use of this portion of the Concession Area described herein, shall immediately terminate.

3.1.6

Conflict Resolution:

Concessionaire recognizes and understands that conflicts with one or more of the following entities, groups, and/or individuals may arise during the term of this Agreement, or any extensions thereof:

- Conflicts between Lincoln Road (or other) Merchants/Businesses and Concessionaire
- Conflicts between Vendors and Concessionaire
- Conflicts between Vendors and the General Public
- Conflicts between General Public and Concessionaire

As such, Concessionaire further recognizes and understands that notice of said conflicts may be directed to the attention of Concessionaire or the City. In the event a notice of conflict is communicated to the City, the City will communicate same to the Concessionaire, as soon as practicable.

Whenever a conflict arises, upon Concessionaire's receipt of notice of same, whether written or verbal, between any of the aforesated entities, groups, or individuals, with any of Concessionaire's operations, resolution to said conflicts will be addressed in the following manner:

1. Concessionaire shall meet with the conflicted party and endeavor, using its best efforts and good faith, to resolve the conflict to the satisfaction of all parties concerned within fourteen (14) calendar days from receipt of notice.
2. In the event the conflict cannot be resolved as stated in Number 1 above, then the Concessionaire shall provide written notice to the conflicted party, (with copy to the City Manager's designee) with a date on which to meet with the City Manager's designee, to address the conflict. At that time, the City Manager's designee will recommend a resolution. The City Manager's designee shall endeavor to set a meeting date within fourteen (14) calendar days of receipt of a copy of the written notice to the conflicted party. For purposes of this Section, the City Manager's designee shall be the Asset Manager of the City.
3. In the event the resolution recommended by the City Manager's designee is not acceptable to the Concessionaire or the conflicted party, the City Manager's designee shall inform

the City Manager, and provide him with the pertinent details of the conflict. The City Manager may make a determination as to whether he concurs with the designee's recommendation; offer an alternate resolution; or choose to meet with Concessionaire and the conflicted party to get additional information prior to making a final determination.

Notwithstanding the foregoing, the City Manager's final determination, will be binding upon Concessionaire, and Concessionaire shall agree to be bound by same except for conflicts between non-merchant vendors and Concessionaire which shall be resolved between the respective parties.

Concessionaire agrees and understands that the above referenced conflict resolution language is not applicable to any conflicts that may arise between the City and the Concessionaire pursuant to this Agreement, or conflicts outside of the City's purview, control or jurisdiction.

- 3.1.7 The condition and quality of Concessionaire's facilities shall at all times be maintained in a manner that is consistent with the condition and quality of similar facilities in first class open air markets located in other world class areas. It is the City's intent, and Concessionaire hereby agrees and acknowledges same, to develop and promote world class open air street market facilities and operations that would be comparable to those found in other world class public areas. Accordingly, Concessionaire shall not only, at a minimum, ensure that all facilities placed within the Concession Area are well maintained and in usable condition, but shall adhere, as indicated in this Subsection, to high ongoing maintenance standards for same consistent with the aforementioned condition and quality.
- 3.1.8 Quality of goods and services offered will be first-rate and comparable to that available in open air markets in other world class areas on par with the City of Miami Beach or, at a minimum, to the quality and pricing of goods and services provided by privately owned businesses selling like goods and services within the City of Miami Beach.
- 3.1.9 In addition to Concessionaire's general maintenance obligations for the Concession Area, as set forth in Section 10 hereof, all portions of the Concession Area shall at all times be maintained in a clean and sanitary manner.
- 3.1.10 Concession operations shall be offered to patrons at all times during the days and hours of operation set forth in Section 9 herein. However, if the City, at its sole discretion, deems that there is a decrease in demand for the concession operations, or if the Concessionaire provides the City with written notice that it is desirous of reducing its hours of operation, (i) the City shall provide Concessionaire with a minimum of two (2) weeks prior written notice,

requesting the specific decrease in Concessionaire's operation, or (ii) Concessionaire shall provide the City with, at minimum, two weeks prior written notice, requesting to reduce said hours, for the City's written approval (which shall not be unreasonably withheld) prior to implementing said schedule of reduced hours of operation. Said notice to the City shall include the newly proposed schedule of operation. In the event the City requests that Concessionaire decrease its operations pursuant to this Subsection, then the partial termination provisions of Subsection 13.6.3 shall apply.

Similarly, if Concessionaire is desirous of increasing its hours of operation in the Concession Area then, in that event, the Concessionaire shall obtain the City's prior written consent.

Concessionaire agrees and acknowledges that any Concessionaire requested reduction in the scheduled hours of operation as may be provided herein shall not in any way reduce Concessionaire's financial responsibility to the City, as required in Section 4, except if same is deemed by the City to be a partial termination pursuant to Subsection 13.6.3.

## 3.2 Permitted Concession Operations / Uses.

- 3.2.1 Antiques:  
This shall generally include the sale of items created at least 100 years prior to the execution of this Agreement.
- 3.2.2 Vintage Goods:  
This shall generally include the sale of items of high style and quality created at least 25 years prior to the execution of this Agreement.
- 3.2.3 Collectibles:  
This shall generally include the sale items including, but not limited to, jewelry, bric-a-brac, reproductions, memorabilia, art, and creative uses of recycled components, etcetera, in the spirit of antique and/or vintage.
- 3.2.4 In the event that the City Manager or his designee determines, at his sole option and discretion, that all or a portion of Concessionaire's proposed uses, pursuant to Subsection 3.1 and as defined in Section 3.2, are no longer desired, then the City may revoke Concessionaire's right to provide all or a portion of said uses, without cause, upon thirty (30) days written notice to Concessionaire. Any percentage of gross paid by Concessionaire (pursuant to Subsections 4.2 and 4.3) to City with regard to a delete/discontinued use, shall be prorated and/or adjusted accordingly as of the date of termination of said use, and no further payment shall be required for same during the term of this Agreement, unless the City reinstates the use, at which time the payment provisions of Subsections 4.2 and 4.3 shall once again apply.



3.3 Intentionally Omitted.

3.4 Intentionally Omitted.

3.5 Intentionally Omitted.

3.6 Off-Duty Police / Field Monitor.

3.6.1 Off-Duty Police:

Concessionaire agrees to provide Off-duty Police services as same is required pursuant to City of Miami Beach policy or as may be required in accordance with applicable law. Notwithstanding the foregoing, Concessionaire, at minimum, shall provide, at its sole cost and expense, at least one (1) Off-duty Police Officer during hours of operation, including set-up and break down periods, on days that the Market is scheduled to operate.

3.6.2 Field Monitor:

Additionally, Concessionaire agrees and understands that a Field Monitor, who will report to and be under the direction of the City, is required for a minimum of two (2) hours daily on Sunday in order to assist in monitoring concession operations. Concessionaire further agrees and understands that any and all costs associated with said Field Monitor shall be borne by Concessionaire and reimbursed to the City on a monthly basis, along with its regularly scheduled monthly payments pursuant to Section 4.2 herein. Concessionaire's responsibility for the costs associated with said Field Monitor position for the initial term shall be limited to Seventeen (\$17.00) Dollars per hour. During the renewal term, said limit shall be increased by 3% per contract year or by the annual Consumer Price Index, All Urban Consumers, as reported by the U.S. Bureau of Labor Statistics (CPI), whichever is greater.

3.6.3 Concessionaire supervisory/management employee shall be on duty and on-site within the Concession Area at all times during which the Market is operating, including but not limited to Set-Up and Move-Out periods, as defined in Subsection 9.2 herein.

3.7 Vendor Selection / First Priority to Miami Beach Merchants.

3.7.1 Within thirty (30) days from the Commencement Date of this Concession Agreement, and for a period of thirty (30) days thereafter, the Concessionaire shall offer Miami Beach licensed merchants the opportunity to participate (a booth space in the Market) as vendors before opening its search to the general public or other networks. The Concessionaire will establish this "pool" and will also serve as the clearinghouse for booth availability and vendor applicants. The Concessionaire shall commit to use this clearinghouse during the initial availability of booth space before expanding its search to other networks.

The Concessionaire will use best efforts to ensure that all Miami Beach licensed merchants are contacted and that announcements regarding booth availability are disseminated throughout the City of Miami Beach, as quickly as possible so as to take optimum advantage of the thirty (30) day availability period, including but not limited to, advertising in a local newspaper, placing information on the Market or other websites, or other similar efforts.

The Concessionaire will make itself available to answer any questions potential applicants may have about the Market.

3.7.2 Notwithstanding the foregoing, and for purposes of this Section 3.7, in the event that the number of responsive Miami Beach licensed merchants desirous of participating in the Market would cause Concessionaire to displace any vendors who have been and are currently and actively participating in the Market as of the date of execution of this Agreement, and such displacement is directly due to lack of available space within the Concession Area, then in such event Concessionaire and the City agree to meet and discuss, in good faith, and make reasonable efforts to resolve this matter. It is understood by the parties herein, that the intent of this Subsection 3.7 is not to displace vendors who are currently and actively participating in the Market but to provide opportunities for those Miami Beach licensed merchants who desire to participate in the Market.

3.7.3 The Concessionaire will keep and make available to the City for inspection, upon notice by the City, carefully detailed records, including the name, address, telephone numbers, qualifications, experience, and the proposed goods and services to be offered for sale by its vendors, and will pay particular attention to matching vendors and booths with appropriate locations.

3.8 Removal of Concession Facilities.

Concessionaire agrees that all its facilities or other items used in the concession operations will be removed from the public right-of-way/Concession Area and said removal shall be done on a daily basis, in compliance with the time parameter(s) set forth in Subsection 9.2 herein.

3.9 Hurricane Evacuation Plan.

Concessionaire agrees that all its facilities or other items used in the concession operations will be removed from the public right-of-way/Concession Area and said removal shall immediately begin no later than upon the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management, and stored at a private, off-site location.

3.10 City Occupational Licenses.

Concessionaire shall obtain, at its sole cost and expense, any occupational licenses required by City law, as amended from time to time, for its proposed operations, as contemplated in Section 3 of this Agreement. For purposes of

this Agreement, Concessionaire shall obtain the applicable "Promoters" category City occupational license.

#### SECTION 4. CONCESSION FEES.

##### 4.1 Security Deposit.

Upon execution of this Agreement Concessionaire shall furnish the City with a Security Deposit, in the amount of Two Thousand Five Hundred (\$2,500) Dollars (approximately equal to one month's rent based on the Market's prior year's actual revenues). Said Security Deposit shall serve to secure Concessionaire's performance in accordance with the provisions of this Agreement. In the event the Concessionaire fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Concessionaire does not satisfy the aforesaid condition within the time periods provided herein, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

##### 4.2 Percentage of Gross (vs.) MG (PG).

During the initial term, and any renewal term, of the Agreement, Concessionaire shall pay the City, on a monthly basis, and within thirty (30) calendar days from the end of each month during the term herein, an amount equal to twelve and one-half (12.5%) percent of Concessionaire's gross receipts (PG). In the event that the annual PG is less than the amount provided in Subsection 4.3 below, then the Concessionaire shall also pay to the City, on an annual basis, the difference between the PG amount and the amount provided in Subsection 4.3 below, no later than 30 days after the expiration of the initial term, or of the renewal term of this Agreement, as the case may be.

Notwithstanding the above, in the event Concessionaire's annual gross receipts exceed 110% of its prior year gross receipts, Concessionaire shall pay to the City an additional amount equal to 2.5% of those gross receipts that exceed 100%, through and including those gross receipts that equal 120% of its prior year's gross receipts; and

In the event Concessionaire's annual gross receipts exceed 120% of its prior year gross receipts, Concessionaire shall also pay to the City an additional amount equal to 2.5% of those gross receipts that exceed 120% of its prior year's gross receipts.

The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City

sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority. Except as otherwise provided, with regard to a special event under Subsection 16.1 hereof in which Concessionaire is not permitted to continue operating, the pro-rata share due to the City for the event days will be abated.

4.3 Minimum Guarantee (MG).

Notwithstanding the PG payment required pursuant to Subsection 4.2, and in consideration of the City executing this Agreement and granting the rights provided in this Agreement, Concessionaire shall pay to the City a Minimum Guaranteed Annual Concession Fee (MG) of Thirty One Thousand (\$31,000) Dollars for the initial term. Said initial MG is based on a percentage (approximately 100%) of the 2003/2004 Fiscal Year revenues received by the City of Miami Beach, from Production Sud, Inc., pursuant to the Production Sud's Special Event permit for the Lincoln Road Antique and Collectibles Market for the respective time period, and shall be paid annually in accordance with Sections 4.2 and 4.3, as applicable.

In the event that the City, at its sole discretion, chooses to extend the term of this Agreement for the additional one (1) year renewal term, the renewal term year MG shall be automatically increased, by five percent (5%) from the previous year's MG, or one-hundred (100%) percent of the prior year revenues remitted to the City, whichever is greater, and shall be due and payable to the City, in accordance with Sections 4.2 and 4.3, as applicable.

4.4 Use of Electricity.

Neither Concessionaire, nor its Vendors shall use, or have the right to use, any electrical outlet located on any City right-of-way or City-owned property, nor shall use, or have the right to use, any other means by which to access electricity from any City public right-of-way, or any City-owned property.

In the event Concessionaire and/or its Vendor(s) intend to access and use electricity from any privately-owned property or source, same must be in accordance with applicable law, including the procurement of all applicable permits and authorization related to same.

4.5 Interest for Late Payment.

Any payment which Concessionaire is required to make to City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of twelve percent (12%) per annum, from the due date of payment until such time as payment is actually received by the City.

4.6 Sales and Use Tax.

It is also understood that, if applicable, the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due from Concessionaire as net of such Florida State Sales and

## Use Tax.

### SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, but not photocopying, by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

A monthly report of gross receipts must be submitted to the City, through the Finance Department's Revenue Manager, to be received no later than thirty (30) days after the close of each month.

### SECTION 6. INSPECTION AND AUDIT.

Concessionaire shall maintain its financial records pertaining to its operations for a period of three (3) years after the conclusion of the initial term, or (if approved) the renewal term, and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee. Concessionaire shall maintain all such records at its principal office, currently located at 428 Espanola Way, Miami Beach, Florida, 33139 or, if moved to another location, all such records shall be relocated, at Concessionaire's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City that the City desires to review said records.

The City Manager or his designee shall be entitled to audit Concessionaire's records pertaining to its operation as often as it deems reasonably necessary throughout the term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Concessionaire's statement of gross receipts for any year or years audited, in which case the firm shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until Concessionaire has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. Nothing contained within this Section shall preclude the City's audit rights for resort tax collection purposes.

Concessionaire shall submit at the end of the initial term (and, if approved, the renewal term), an audited annual statement of gross receipts, in a form consistent with generally accepted accounting principles.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of the initial term (and, if approved, the renewal term), Concessionaire and City may meet to review Concessionaire's performance under the Agreement. At the meeting,

Concessionaire and City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

## SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

- 7.1 Concessionaire agrees to and shall pay before delinquency all taxes (including but not limited to resort taxes) and assessments of any kind assessed or levied upon Concessionaire by reason of this Agreement or by reason of the business or other activities and operations of Concessionaire upon or in connection with the Concession Area. Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment if so ordered.

Concessionaire shall also pay for any fees imposed by law for licenses or permits for any business, activities, or operations of Concessionaire upon the Concession Area.

Concessionaire shall pay before delinquency any and all charges for utilities used by, for, or on behalf of the operations contemplated herein (including, but not limited to, water, electricity, gas, heating, cooling, sewer, telephone, trash collection, etc.).

- 7.1.1 Electricity:  
Intentionally Omitted.

- 7.2 Procedure If Ad Valorem Taxes Assessed.  
Notwithstanding Subsection 7.1 above, the parties agree that the concession operations contemplated herein are for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, said taxes are assessed, City and Concessionaire shall use reasonable efforts to address payment of same.

## SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

- 8.1 In connection with the performance of its responsibilities hereunder, Concessionaire may hire its own employees and/or independent contractors, who will be employees and/or independent contractors of Concessionaire and not employees or agents of the City. Additionally, Concessionaire's vendors shall not be considered agents or employees of the City. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to its employees and/or independent contractors.

- 8.2 Concessionaire shall ensure that all its employees and/or independent contractors observe all the graces of personal grooming. The Concessionaire shall hire people to work in its concession operation who are neat, clean, well groomed and shall comport themselves in a professional and courteous manner, and ensure that its vendors and/or independent contractors comply with same. The Concessionaire and any persons hired by same, shall never have been convicted of a felony. If Concessionaire materially fails to comply with this provision the City may default Concessionaire pursuant to Section 13 herein.
- 8.3 The Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

#### SECTION 9. SCHEDULE OF OPERATION.

Concessionaire's operations shall be open on the Concession Area, in accordance with the schedule outlined below, weather or events of force majeure permitting.

- 9.1 Day(s) of Operation: Sundays only, more specifically as follows:

October 10 & 14, 2004  
November 14 & 28, 2004  
December 5 & 19, 2004  
January 9 & 23, 2005  
February 13 & 27, 2005  
March 6 & 27, 2005  
April 10 & 24, 2005  
May 1 & 15, 2005

In the event the City exercises its option to extend this Agreement for an additional one year term, as provided for in Subsection 1.2 herein, Concessionaire's day(s) of operation shall continue to be on Sundays only. Concessionaire shall provide the City with said dates of operation, prior to City authorizing any extension of the term.

- 9.2 Operating Hours:  
Set-Up:  
Must not begin earlier than 12:01 AM and end by 9:00 AM
- Market operating hours: 9:00 AM to 6:00 PM
- Move-Out: 6:00 PM to 11:30 PM

Any change in the days or hours of operation require the prior written consent of the City Manager including, but not limited to, change in the days and hours of operation requested pursuant to Subsection 3.1.10.

#### SECTION 10. MAINTENANCE.

- 10.1 The Concessionaire accepts the use of the Concession Area provided in this Agreement in its "as is" condition. Concessionaire assumes sole

responsibility and expense for maintenance of the Concession Area and its facilities therein. This shall include daily removal of litter, garbage and debris, said removal to be the sole responsibility and expense of Concessionaire. Daily maintenance shall be accomplished on all days and hours Concessionaire operates. Concessionaire agrees, also at its sole cost and expense, to pay for all garbage disposal generated by its operations.

10.2 Garbage Receptacles.

With respect to litter, garbage and debris removal, the Concessionaire shall provide, at its sole cost and expense, receptacles within the confines of the Concession Area and shall provide a sufficient number of these receptacles for its own use and for the use of the public that patronizes the Market. Disposal of the contents of said receptacles and removal of litter, garbage and debris within the Concession Area, shall be accomplished by the end of the day on all days on which the Concessionaire operates, and shall be the sole responsibility of the Concessionaire. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do the same, will be charged to, and become the responsibility of, the Concessionaire. The dumping or disposal of any refuse, discards, trash or garbage, generated by, or as a result of the concession operations, into any City trash receptacles by the Concessionaire (including its staff, employees and/or vendors) shall be strictly prohibited. Determination of the "number" of receptacles shall at all times be within the City's sole discretion, and Concessionaire shall agree to be bound by same.

10.3 Pressure Cleaning.

Concessionaire shall be responsible, at its sole cost and expense, for the pressure cleaning of the Concession Area, including all abutting sidewalks and public right-of-way adjacent thereto, at least once every four (4) months, or on an as needed basis, as deemed by the City, in its sole discretion.

10.4 Facilities.

Intentionally Omitted.

10.5 Orderly Operation.

The Concessionaire shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Concession Area and all facilities incident thereto. The Concessionaire shall make available all operations and facilities within the Concession Area (including but not limited to vendor facilities) for examination during days and hours of operation by the City Manager or his authorized representative.

10.6 No Dangerous Materials.

- 10.6.1 The Concessionaire agrees not to use or permit in the Concession Area and/or facilities the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives



of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Concession Area and/or facilities shall be immediately removed.

- 10.6.2 Notwithstanding any contrary provisions of this Agreement, Concessionaire, after the Commencement Date, shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire, and/or its employees, vendors, agents and/or subcontractors, after the Commencement Date, but during the term of this Agreement, of any hazardous substance or petroleum products on, under, in or upon the Concession Area as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Concessionaire shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection 10.6 shall survive the termination or earlier expiration of this Agreement.

10.7 Security.

The Concessionaire shall be responsible for and provide reasonable security measures which may be required to protect the Concession Area and any of the facilities, goods and/or other equipment thereon. Under no circumstances shall the City be responsible for any stolen or damaged goods, facilities, materials and/or other equipment, nor shall City be responsible for any stolen or damaged personal property of Concessionaire's employees, vendors, patrons, guests, invitees, and/or other third parties.

10.8 Vehicles on the Public Right-of-Way.

Concessionaire's employees, vendors, patrons, guests, invitees, and/or other third parties vehicles and/or trailers shall only be allowed on the street adjacent to Concession Area/public right-of-way for purposes of setting up the concession operations, and to remove same at the close of operations each day, and any and all such vehicles for purposes thereon must be removed from the public right-of-way immediately thereafter. Concessionaire shall contractually require that anyone operating a vehicle for, or on behalf of Concessionaire and/or its employees, agents, and/or vendors, must have a current valid Florida Driver's License. Said set-up and move-out operations shall only be permitted during regular hours for same, pursuant to Subsection 9.2 herein, and shall be completed safely and expeditiously. No vehicular traffic or parking will be permitted on the public right-of-way during concession hours of operation, pursuant to Subsection 9.2 herein. Access to the public right-of-way shall only be permitted via specifically designated points authorized for such use and the nearest authorized access to a concession vendor's operation.

Vehicles operated on the public right-of-way shall not exceed 5 M.P.H. and shall only operate in the immediate vicinity of the concession, or to-and-from

the nearest predetermined and assigned access point. After transporting facilities, goods, merchandise, equipment, and/or other items to the Concession Area, the vehicles shall be removed from the public right-of-way and parked in a legally authorized location. Driving on the public right-of-way shall be kept to a minimum. No vehicular traffic will be permitted on the public right-of-way, at any time or for any purpose, other than as stated herein.

Vehicle operator must inspect the vehicles perimeter and surrounding area, prior to turning the vehicles ignition switch, to assure a clear path of egress and only proceed with extreme caution.

10.9

Inspection.

The Concessionaire agrees that the Concession Area and all facilities and operations thereon, including but not limited to vendor booths, may be inspected at any time during days and hours of operation by the City Manager or his designee, or by any other Municipal, County, State officer, or agency having responsibilities for inspections of such operations. The Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference (which interference, if by the City, must be reasonable) with the concession operation by any public agency or official in enforcing their duties or any laws or ordinances. Any such interference (which interference, if by the City, must be reasonable) shall not relieve the Concessionaire from any obligation hereunder.

**SECTION 11. INSURANCE.**

Concessionaire shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement.

- a. Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products and contractual liability.
- b. Workers Compensation Insurance shall be provided as required under the Laws of the State of Florida.
- c. Automobile Insurance for any vehicles used for, or associated with concessionaire's operations shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

**Failure to procure or maintain the required insurance program shall, at the City's discretion, either (i) constitute an automatic default of the Concession Agreement under which the City may, upon written notice to Concessionaire,**

**immediately terminate the Agreement; or (ii) the City, in its sole discretion, may obtain the insurance itself, in which case said insurance shall be charged back to the Concessionaire as provided in the following paragraph.**

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, automatically terminate this Agreement or, in the alternative, deem to obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Concessionaire fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, or, at its option, the City may declare the Agreement in default pursuant to Section 13 herein.

#### **SECTION 12. INDEMNITY.**

- 12.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or subconcessionaires in the performance of services under this Agreement.
- 12.2 In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants or employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or subconcessionaires, not included in the paragraph in the Subsection above and for which the City, its agents, servants or employees are alleged to be liable.
- 12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement. Subsections 12.1 and 12.2 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.

- 12.4      Subrogation.  
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and their respective officers, employees and agents.
- 12.5      Force Majeure.  
Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:
- a.      fire which renders at least thirty percent (30%) of the Concessionaire's cumulative facilities and operations unusable and which is not caused by negligence of Concessionaire;
  - b.      earthquake; hurricane; flood; act of God; civil commotion occurring on the Concession Area during or in connection with any event or other matter or condition of like nature; or
  - c.      any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war.
- 12.6      Labor Dispute.  
In the event of a labor dispute which results in a strike, picket or boycott affecting the Concession Area or operation described in this Agreement, Concessionaire shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been caused by illegal labor practices or violations by Concessionaire of applicable collective bargaining agreements and there has been a final determination of such fact which is not cured by Concessionaire within thirty (30) days.
- 12.7      Waiver of Loss from Hazards.  
The Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from fire, water, natural disasters/acts of God (e.g. hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 12.5 and Labor Dispute in Subsection 12.6 above, and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City of Miami Beach, Florida, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

#### SECTION 13. DEFAULT AND TERMINATION.

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4. An event of default by City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5.

- 13.1      Bankruptcy.  
If either the City or Concessionaire shall be adjudged bankrupt or insolvent,

or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.2 Default in Payment.

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of \$50.00 per day for such late payment, in addition to interest at the highest rate allowable by law (currently 12% per annum). If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Concession Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

13.3 Non-Monetary Default.

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this Subsection, it shall promptly provide City with written notice of same.

13.4 City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section 13, shall occur, the City may, after notice (if required) and the expiration of cure periods (as provided above), at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Concessionaire. On the date so

specified, Concessionaire shall then quit and surrender the Concession Area to City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement, all rights and interest of Concessionaire in and to the Concession Area and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement. In addition to the rights set forth above, City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.5 If an event of default by the City, as set forth in this Section 13, shall occur, the Concessionaire may, after notice (if required) and the expiration of the cure periods (as provided above), at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Area to City pursuant to the provisions of Subsection 13.7.

13.6 Termination for Convenience/Partial Termination.

13.6.1 Notwithstanding the provisions of this Section 13, this Agreement may be terminated by the City, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to Concessionaire.

Conversely, this Agreement may be terminated by the Concessionaire, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to City.

13.6.2 Concessionaire acknowledges that the City may develop a schedule of capital improvements for the right-of-way, including all or a portion of the Concession Area, which may entail a closure of all or a portion of the right-of-way and Concession Area, at the City Commission's sole discretion. In the event that the City closes down the right-of-way, or any other portion of the Concession Area, for the purpose of undertaking a capital improvement plan thereon, then the parties agree that that portion of the Agreement referencing said individual Concession Area shall be partially terminated for convenience, without cause and without penalty to either party, and only as to that portion of the Concession Area which has been closed. Such a termination shall become effective upon thirty (30) days prior written notice to Concessionaire.

13.6.3 In the event of termination or partial termination by City of the Agreement pursuant to this Subsection, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in business or damages for interruption of services or interference in its concession operations by Concessionaire or its vendors). However, if it is determined, via a contract year end-review, that a termination or partial termination results in a decrease to the gross revenues derived by the Concessionaire, then Concessionaire's MG amount due to the City, pursuant to Section 4.3, shall be reduced proportionately equal to the percentage of Concession Area that was terminated or partially terminated and for the period of time of said partial termination.

13.6.4 In the event of termination for convenience by Concessionaire pursuant to Subsection 13.6.1, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees. Moreover, Concessionaire's MG amount due to the City, pursuant to Section 4.3, shall be reduced proportionately equal to the period of time remaining on the current term of this Agreement.

13.7 Surrender of Concession Area.

At the expiration of this Agreement, or in the event of a partial termination or termination of the entire Agreement, Concessionaire shall surrender the Concession Area (or portion thereof in the event of a partial termination) in the same condition as the Concession Area was prior to the commencement of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all its facilities, equipment, fixtures, personal property, etc. upon two (2) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Area (or portion thereof) after termination (or partial termination) of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City one thousand dollars (\$1,000) per day as liquidated damages for such trespass and holding over.

SECTION 14. PERFORMANCE BOND OR ALTERNATE SECURITY.

Intentionally Omitted.

SECTION 15. ASSIGNMENT.

Except as otherwise provided in this Subsection, or in the Agreement, Concessionaire shall not assign, sublease, grant any concession or license, permit the use of by any other person other than Concessionaire, or otherwise transfer all or any portion of this Agreement and/or of the Concession Area (all of the foregoing are herein after referred to collectively as "transfers"), without the prior written consent of the City.

Concessionaire shall notify the City Manager or his designee of any proposed transfer, prior to consummation of same and the City or the City Manager or his designee, as applicable, shall respond within thirty (30) days. In the event that any such transfer is approved, the transferee shall agree to be bound by all the covenants of this Agreement required of the transferor hereunder. Any transfer made without complying with this Section shall be null, void, and of no effect and shall constitute an act of default under this Agreement. Notwithstanding any such consent, or any permitted transfer under any provision of this Section, unless expressly released by the City, Concessionaire shall remain jointly and severally liable (along with each approved transferee, who shall automatically become liable for all obligations of the transferor hereunder with respect to that portion of the Agreement so transferred), and the City shall be permitted to enforce the provisions of this Agreement directly against Concessionaire or any transferee of the Concessionaire without proceeding in any way against any other person.

For purposes of this Section 15, Concessionaire's selection of vendors for the Market shall not be deemed a transfer.

#### SECTION 16. SPECIAL EVENTS.

- 16.1 Concessionaire's proposed uses, as set forth in Section 3 herein, do not contemplate the production, promotion or sponsorship by the Concessionaire of special events in any portion of the Concession Area. In the event Concessionaire does produce, promote or sponsor a special event in the Concession Area, it shall abide by the City's Special Events Permit Requirements and Guidelines. For any use, other than those provided for in this Agreement, a Special Events Permit may be required and shall be obtained through the City's Department of Tourism and Cultural Development. The City Manager's authorization must be obtained for any such special event.

The City Administration shall evaluate requests for Special Events Permits on a case by case basis, in accordance with the City's Special Event Permit Requirements and Guidelines.

In the event that a special event and/or film permit is requested by an entity, other than the Concessionaire, and the proposed special event and/or film production is scheduled to occur within all or a portion of the Concession Area, the Concessionaire agrees to cooperate with the City and the special event permit applicant to allow use of the Concession Area during the period of the special event, including set-up and break-down time. The City will use its best efforts to coordinate and schedule special events so as to not negatively impact Concessionaire's operations. However, final determination for permitting of special events shall be at the City Managers sole discretion.

- 16.2 City Special Events.

Notwithstanding Subsection 16.1 above, and in the event that the City, at its sole discretion, deems that it would be in the best interest of the City, the City reserves the right to displace the Concessionaire for City produced special events and/or other City produced productions. In such cases, the City may request that the Concessionaire cease and desist operations during the term



of, and in the area of, the special event and/or production, and the Concessionaire shall cease and desist during said term. In the event that it is determined, via a contract year end-review, that ceasing and desisting of concession operations, as stated herein, results in a decrease to the estimated gross revenues derived by the Concessionaire, then Concessionaire's MG amount due to the City, pursuant to Section 4.3, shall be reduced proportionately equal to the percentage of reduced hours of operation caused by said special event and/or production. If the Concessionaire is not required to close, or chooses to remain open without interference to the special event and/or production, Concessionaire agrees to cooperate with the City. If the Concessionaire is allowed to remain open during special events and/or productions, the Concessionaire may be allowed to have in operation its normal daily complement of facilities and vendors. "Normal" shall be defined as facilities and vendors, as approved by the City, that the Concessionaire has available for the public on a normal business day. Such facilities and vendors shall not be increased or altered during special events and/or productions without the prior written permission of the City Manager or his designee. To the extent that the normal business day complement of facilities and vendors is displaced by the special event and/or production, the Concessionaire may reallocate such displaced facilities and vendors on a pro-rata basis within an area of the Concession Area not being utilized by the special event and/or production.

For purposes of this Section 16, "normal business day" shall be defined as set forth in Section 9 herein, entitled "Schedule of Operations".

16.3 Notwithstanding anything to the contrary, if a special event occurs in all or any portion of any Concession Area, Concessionaire shall not be liable for any charge, fee or other expense, governmental or otherwise, in connection with such special event.

16.4 Street Vendors / Street Performers.

Any locations within the Concession Area identified by the City for non-Concessionaire sponsored street vendors and/or street performers, in accordance with City of Miami Beach Ordinance No. 2002-3366, as may be amended from time to time, or otherwise in accordance with the City's respective rules, regulations, and guidelines associated therewith, as same may also be amended from time to time, are excluded from this Agreement, and Concessionaire shall not interfere or otherwise prohibit said street vendors and/or street performers' activities upon such designated portions of the public right-of-way. Similarly, Concessionaire shall not prohibit or otherwise interfere with the activities of any street vendors and/or street performers who may not be part of a City of Miami Beach permitted process, but who may have certain constitutionally protected rights to perform and/or offer for sale their wares on public rights-of-way, as determined by the City.

SECTION 17. NO IMPROPER USE.

The Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Area, operations, or facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or

Municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The Concessionaire will protect, indemnify, and forever save and keep harmless the City, its agents, employees and contractors from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Concessionaire, its vendors, employees, agents, and/or subcontractors regarding the Concession. In the event of any violation by the Concessionaire, or if the City or its authorized representative shall deem any conduct on the part of the Concessionaire, its vendors, agents, employees and/or subcontractors, to be objectionable or improper, the City shall have the option, at its sole discretion, to either (i) automatically terminate the Agreement, upon prior written notice to Concessionaire, or to (ii) suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving written notice of the nature and extent of such violation, conduct, or practice, and such suspension shall continue until the violation is cured. The Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City.

#### SECTION 18. PRICE SCHEDULES.

Concessionaire agrees that prices charged for facilities and or space (booth) rental shall be at a rate of one hundred fifty (\$150.00) dollars per 10' x 10' vendor single space per day, or two hundred seventy five (\$275.00) dollars per 10 x 20 vendor double space per day. All subsequent price increases must be approved in writing by the City Manager, or his designee, and prior to such changes being implemented within the Concession Area. Notwithstanding the foregoing, Concessionaire agrees and acknowledges that any discounted prices it may offer for the rental of facilities shall not in any way reduce the amount of remuneration due to the City, including but not limited to the Percentage of Gross (Section 4.2).

The City shall have the final right of approval for all such prices and changes, but said right shall not be arbitrarily or unreasonably exercised. The Concessionaire agrees to refrain from the sale or rental of any item identified as prohibited by City law and/or other applicable law and to sell only those items approved by the City.

#### SECTION 19. NOTICES.

All notices from the City to the Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to the Concessionaire at the following address:

Mssrs. Louis Bondi and Anthony Angione  
Production Sud, Inc.  
1360 Marseilles Drive  
Miami Beach, Florida 33141

All notices from the Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail, return receipt requested, to the City of Miami Beach at the following addresses:

City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

The Concessionaire and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Concession Agreement must be in writing.

## SECTION 20. LAWS.

### 20.1 Compliance.

Concessionaire shall comply with all applicable City, Miami-Dade County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

### 20.2 Governing Law.

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. In case of any inconsistency between the terms of this Agreement, and any applicable general or special law, said general or special law shall govern, unless otherwise provided herein.

### 20.3 Equal Employment Opportunity.

Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability, as defined in Title I of ADA. Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

### 20.4 No Discrimination.

The Concessionaire agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in its employment practice or in the operations referred to by this Concession Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Area. All concession operations and services offered shall be made available to the public, subject to the right of the Concessionaire and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the operations and the facilities.

- 20.4.1 Pursuant to Sections 62-90 and 62-91, of Chapter 62, of the Miami Beach City Code entitled "Human Relations", Concessionaire, by executing this Agreement, certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap.

## SECTION 21. MISCELLANEOUS.

### 21.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

- 21.2      Modifications.  
This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his designee.
- 21.3      Complete Agreement.  
This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.
- 21.4      Headings.  
The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.
- 21.5      Binding Effect.  
This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 21.6      Clauses.  
The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.
- 21.7      Severability.  
If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall remain in full force and effect.
- 21.8      Right of Entry.  
The City, at the direction of the City Manager, shall at all times during days and hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.
- 21.9      Not a Lease.  
It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to the Concessionaire, that it is a

concessionaire and not a lessee; that the Concessionaire's right to operate the concession shall continue only so long as this Agreement remains in effect.

21.10 Signage.

Concessionaire shall provide, at its sole cost and expense, any required signs at its concessions. All advertising, signage and postings shall be approved, in writing, by the City in its proprietary capacity, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire on its facilities and equipment shall be subject to the prior approval of the City as to size, shape and placement of same.

21.11 Use of the Right-of-Way.

**The right-of-way is for the use and enjoyment of the public and the public's right to such use shall not be infringed upon by any activity of the Concessionaire. Upon execution of this Agreement, Concessionaire acknowledges that all of the rights-of-way within the Concession Area are public, and as such, concession operations must not restrict, or appear to restrict, access to the general public, or in any way limit the public nature or ambiance of the adjacent area. The Concessionaire will conduct its operations so as to maintain a reasonably quiet and tranquil environment for the adjacent area, and make no public disturbances.**

21.12 Conflict of Interest.

Concessionaire shall perform its services under this Agreement and conduct the concession operations contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire with regard to its responsibilities pursuant to this Concession Agreement.

21.13 Reasonableness.

Notwithstanding anything to the contrary in this Agreement, including but not limited to references to "sole option" or "sole discretion" or words of similar meaning, in each instance in which the approval or consent or other action of the City Commission or the City Manager or his designee is allowed or required in this Agreement, such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

21.14 Procedure for Approvals and/or Consents.

Intentionally Omitted.

21.15 No Waiver.

No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.

21.16 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, including,

but not limited to subconcessionaires, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

21.17 Attorneys' Fees.

If it becomes necessary for City or Concessionaire to enforce their respective rights under this Agreement or any part hereof through litigation, Concessionaire and City agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such litigation, including a reasonable attorneys' fee and costs, for all trial and appellate proceedings.

SECTION 22. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement only if in so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000.00. Concessionaire hereby expresses its willingness to enter into this Agreement with a \$10,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$10.00, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of \$10,000.00, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 68.28.

SECTION 23. VENUE.

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION AREA(S).**

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

**PASSED AND ADOPTED** this 8<sup>th</sup> day of September, 2004.

**Attest:**

**CITY OF MIAMI BEACH**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR**

**Attest:**

**PRODUCTION SUD, INC.**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name and Title of Signatory**

JMG/CMC/JD/r/r

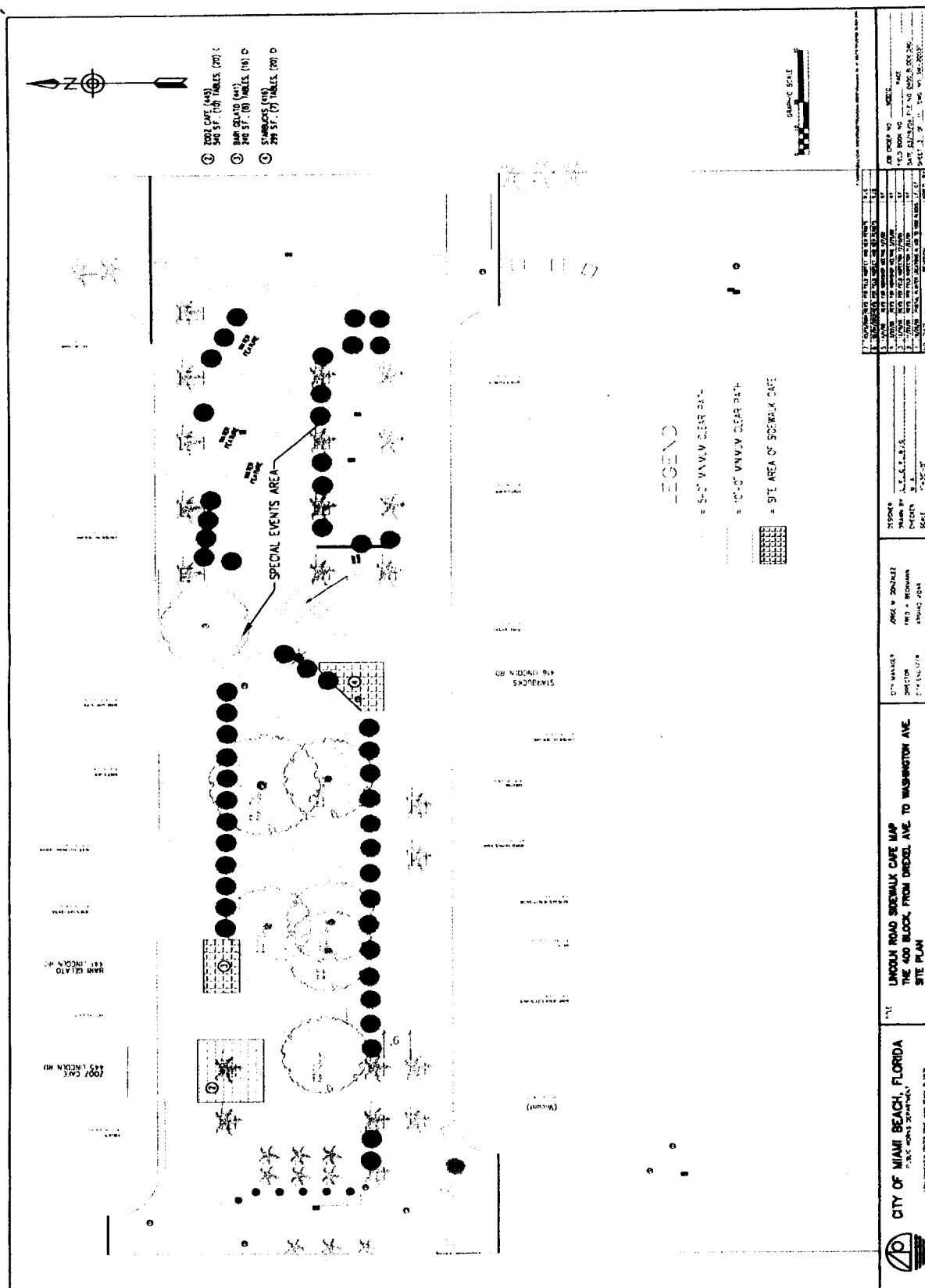
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**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

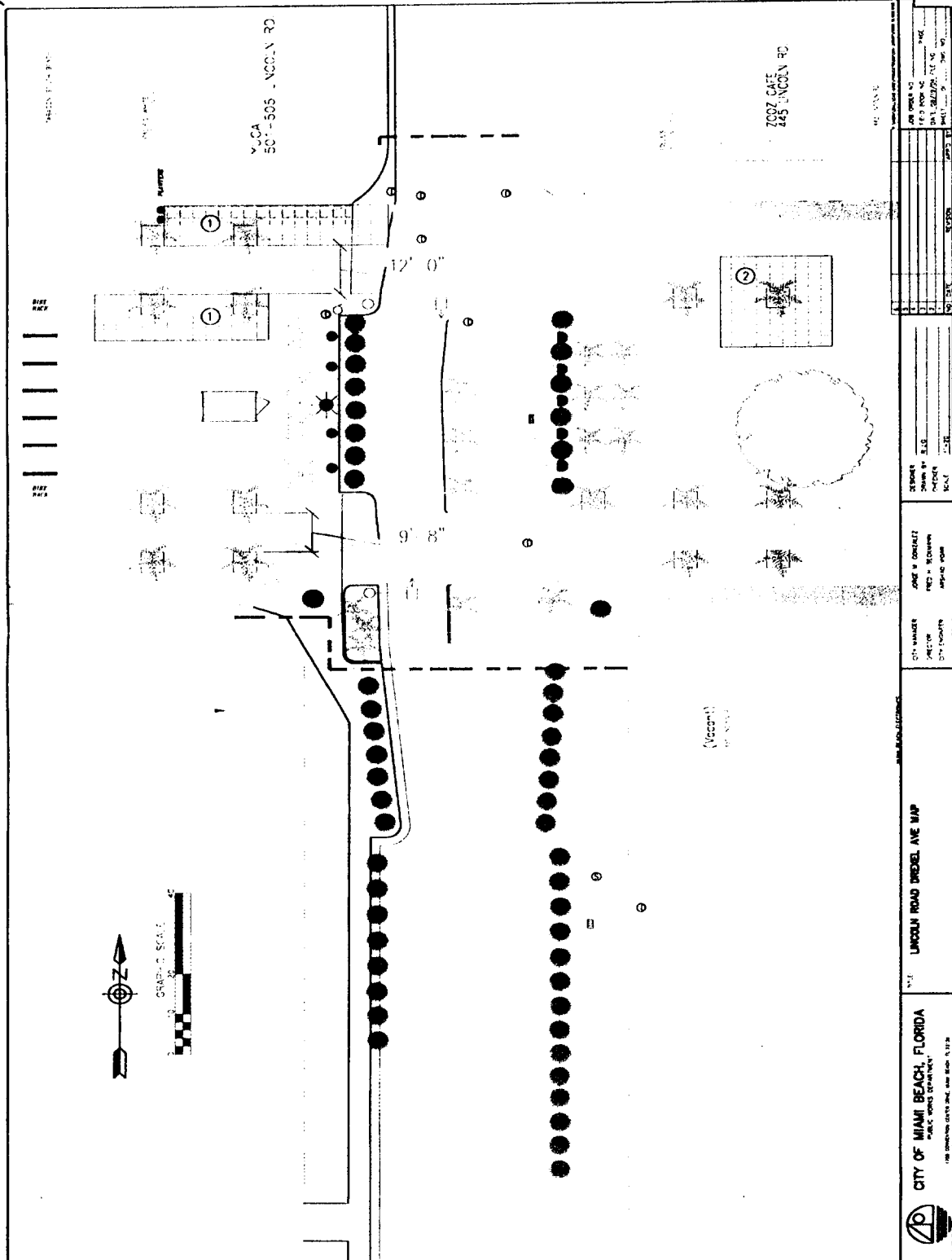
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Date

## EXHIBIT 2.1

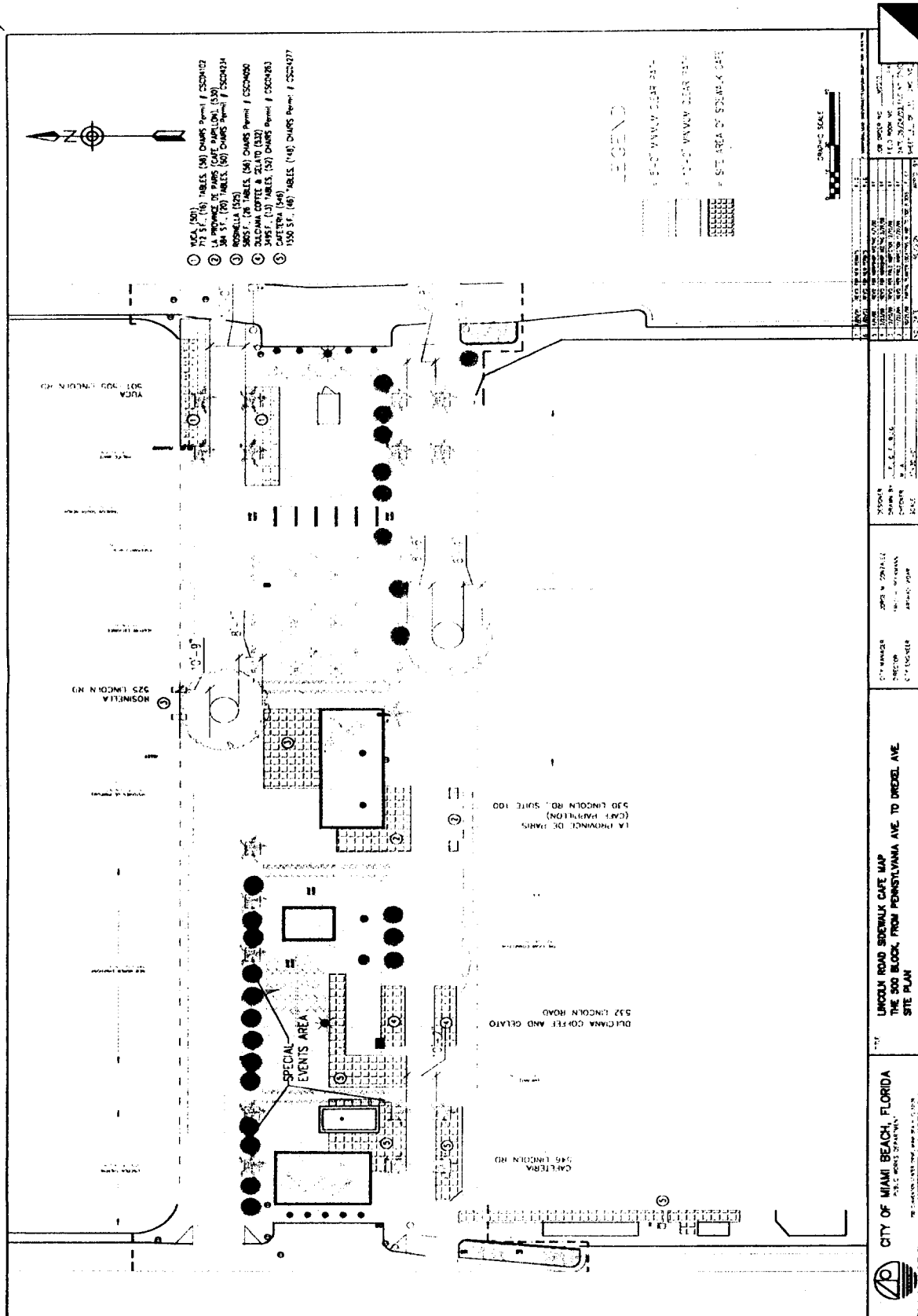




# EXHIBIT 2.2



## EXHIBIT 2.3



# **EXHIBIT 3.1.1**

(Facilities Design)

**PENDING CONCESSIONAIRE**

# **EXHIBIT 3.1.2.1**

(Page 1 of 2)

(Special Events Disability Access Punch List)

## **Special Events Disability Access Punch List**

1. Ensure curb cuts and cross walks are kept free and clear for usage, with a continuous accessible route of 44 inches in width.
2. The Event Producer must ensure that any nearby accessible on- or off-street parking ("handicapped parking") is not obstructed by vehicles loading/unloading equipment, etc. If such obstructions occur, the Event Producer must see that such obstructions are removed immediately. Accessible parking spaces shall be connected to the site's continuous accessible route, with no obstructions between the accessible parking spaces and the curb ramps that serve those spaces.
3. Any and all accessible routes created and/or installed by the Event Producer, or under the Event Producer's supervision, must have no abrupt change in level in excess of  $\frac{1}{4}$  inch. Where such changes in level are present, properly bevel the change in level at a 1:2 ratio or provide a ramp with a slope not to exceed a 1:12 ratio. This is necessary to allow passage of wheelchairs or strollers and prevent tripping or the catching of walkers and canes. Any ramps provided must be in compliance with all Florida Accessibility Code requirements, including, but not limited to, requirements regarding edge protection, handrails, and surface.
4. Provide a smooth transition between temporary pathways and any ramps, sidewalks, streets, or parking lots. This means no change in level exceeding  $\frac{1}{4}$  inch. Any change exceeding  $\frac{1}{4}$  inch requires beveling at a 1:2 ratio or the installation of a ramp with a slope not to exceed a 1:12 ratio. Any ramps provided must be in compliance with all Florida Accessibility Code requirements, including, but not limited to, requirements regarding edge protection, handrails, and surface.
5. All cashier counters (counters where money transactions occur) must be no higher than 36 inches maximum above finish floor, for a minimum length of 36 inches.
6. Maintain an accessible route for access to merchandise that is both within a vendor space, as well as merchandise not contained within a vendor space. If the overflow of merchandise for patron viewing is placed behind a booth, then provide adjacent access to the merchandise via a curb ramp, as well as the placement of a pathway with a stable and firm surface necessary for the use of wheelchairs and mobility aids.
7. Merchandise for display should be within a line of sight no higher than 48 inches for persons of short stature or wheelchair users. If merchandise is

## **EXHIBIT 3.1.2.1**

(Page 2 of 2)

(Special Events Disability Access Punch List)

displayed higher than 48 inches, merchant must provide assistance to disabled customers in order to reach items.

8. All vendor spaces shall be located on an accessible route that is a minimum of 44 inches wide.
9. If tables and seating are provided for the consumption of food, all aisles adjacent to accessible fixed seating shall provide 30 inch by 48 inch clear floor space for wheelchairs. Where there are open positions along both sides of such aisles, the aisles shall be not less than 52 inches wide.
10. For wheelchair seating spaces provided at tables or counters, knee spaces at least 27 inches high, 30 inches wide, and 19 inches deep shall be provided. The tops of accessible tables and counters shall be from 28 inches to 34 inches above the finish floor or ground.
11. Where food or drink is served at counters exceeding 34 inches in height for consumption by customers seated on stools or standing at the counter, a portion of the main counter which is 60 inches in length minimum shall be provided in compliance with the requirements of Items #9 and #10 above, or service shall be available at accessible tables within the same area.
12. Where portable toilets are provided, an accessible route shall be provided to the toilets. Five percent of the total number of toilets must be accessible. If clusters of portable toilets are distributed throughout the site, then each cluster must have accessible units.
13. If general assembly seating or standing space is provided for audience members attending a public performance at a special event, reserved wheelchair seating must be provided. Such seating must be provided in a location that allows wheelchair users an unobstructed line of sight to the stage. If seating capacity accommodates greater than 300 persons, then accessible seating shall be dispersed throughout the venue.

# EXHIBIT A

APPLICATION AND CONTRACT / PRODUCTION SUD / OCT 2004 / MAY 2005 SEASON

## THE LINCOLN ROAD MIAMI BEACH SHOW

Production Sud is the foremost leader of outdoor antique show events in south Florida. We pride ourselves in developing new markets for our Antique Dealers in the finest and fastest growing urban areas. Always a favorite of locals, Prod Sud is ever working to reach tourists and fresh enthusiasts to our events. Always the prime locations with wonderful restaurants and always free admission to the public, is it any wonder that so many patrons decide to make a full day of the festivities. This season we are proud to present a Full schedule for our ever-growing list of dealers. **"We are Dealer friendly" Remember Prod Sud is the only Promoter not to tie our dealers up in contracts.**

Welcome to beautiful south Florida and lets have a wonderful season.

- PLEASE READ THE INFORMATION & INSTRUCTIONS;
- COMPLETE & SIGN PAGES ONE AND SELECT
- WHICH SHOW & DATE / DATES YOU ARE MAILING PAYMENT YOUR FOR;
- MAIL IN PAYMENTS TO "PRODUCTION SUD"
- THEN, IF THERE ARE ANY QUESTIONS WE COULD HELP YOU WITH;
- PLEASE CALL Us @ (305) 673-4991. (We have no incoming: fax line. Please mail in contracts & payments only).

Website at: <http://www.antiquecollectiblemarket.com>

(download all dealer contracts, show dates, and visitor info)

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004/05  
by and between "Production Sud" hereinafter referred to as "Promoter/Production Sud";

MAILING ADDRESS:

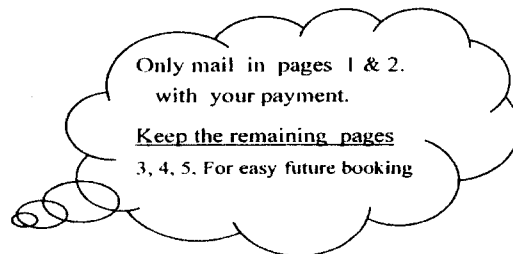
Production Sud  
P.O. Box 191943  
Miami Beach, FL 33139  
(305) 673-4991

BUSINESS PHONE:

AND:

Your Name \_\_\_\_\_ Business Name \_\_\_\_\_  
Tax I.D. # \_\_\_\_\_ Business Tel # \_\_\_\_\_  
Home Tel # \_\_\_\_\_ Your Fax# \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

LINE OF ANTIQUE & COLLECTIBLE MERCHANDISE, PLEASE BE SPECIFIC AND ATTACH BUSINESS CARD;



**Do not fax us**  
**Mail it in only**  
**With payment...**

Hereinafter referred to as the "EXHIBITOR"

WITNESSETH

**LIABILITY:** THE UNDERSIGNED EXHIBITOR HEREBY RELEASES, WAIVES, AND FOREVER DISCHARGES PROMOTER / PRODUCTION SUD, ITS AGENTS, OFFICERS AND EMPLOYEES from all liability to the undersigned of and from all claims and demands, actions and causes of action, damages, losses, Liabilities, costs, expenses and compensation, on account of the death or injury to the person or property of the undersigned, and any and all known and unknown, foreseen and unforeseen damages and consequences thereof, caused or arising out of the undersigned's participation in any and all shows from Oct 10th 2004 to May 22nd 2005, please note: Production Sud will not be responsible for any breakage, or liabilities, stemming from your private dealings with any helpers, porters that appear at our Production Sud shows). **MERCHANDISE LIMITATIONS:** Production Sud reserves the right to require the dealer to remove from the booth any item or items which in its sole opinion are not appropriate for an antique and collectable show and sale. New merchandise and /or reproductions as determined by the promoter that are inappropriate. **MERCHANDISE WARRANTY:** The undersigned exhibitor expressly warrants that the goods sold to any purchaser are what the exhibitor represents they are. If the goods sold are not as represented, the exhibitor shall refund the full sales price to purchaser. If any purchaser brings a lawsuit in law or equity against Production Sud or its employees, for any goods sold which are not what was represented by the exhibitor, its agents or employees, the exhibitor hereby agrees to indemnify and hold harmless Promoter/Production Sud or it's employees for any losses sustained from said action, including attorneys' fees, second attorneys' fees, or appeal incurred by Production Sud for the defense of the action and/or the indemnification and shall hold harmless.

Exhibitor's Name

Print

Signature

(PLEASE TURN THIS PAGE OVER, AND FILL OUT THE MAIL-IN DATES / INFO)

Page 1 of 5

## **ALL SPACES COME TENTED AND INCLUDED IN THE PRICE**

(You only have to send in.... the payment of the up-coming show-dates per month not the entire seasons amounts due)

### **THESE ARE THE 10 BY 10 FEET TENTED BOOTH PRICES:**

SINGLE SPACE FOR MIAMI BEACH SHOW = \$150.00 PAYMENTS IN ADVANCE OF SHOW DATE

DOUBLE SPACE FOR MIAMI BEACH SHOW = \$270.00 PAYMENTS IN ADVANCE OF SHOW DATE

TABLES 8'x 30' = \$10.00

## **HOW TO BOOK THE UPCOMING SHOWS**

### **# 1 PRINT THE DATE / DATES YOU ARE CURRENTLY SENDING IN PAYMENT FOR:**

### **# 2 Please "Circle" the number of 10' x 10' tented spaces you would like to rent and reserve.**

I would like;

(10 ft by 10 ft) Tents per show

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

### **#3 Please "Circle" the number of tables YOU would like to rent and reserve.**

"My enclosed check is for these dates".....

I would like;

( 8 ft by 30 ins) Tables per show

1	2	3	4	5	6	7	8
---	---	---	---	---	---	---	---

### **PLEASE NOTE:**

Refer to our contract calendar to see what dates, and their prices, you have selected.

(Tables are \$10.00 each no matter which of our 3 shows YOU book with us)

& should be added to your mailed-in check.

### **# 4 Are you bringing a big truck? (yes/no) or trailer? (yes/no).**

## **HOW TO BOOK FUTURE SHOW DATES**

You only have to send in the contract paper-work once per season. Once we have your business information, full name, and contact info., you will only have to mail in a check / money-order with your full name and telephone # (w area code), and what show or show-dates you are booking, and any table fee's or table setup changes per show.

**Please remember to mail in at least two weeks before the coming show dates,** and remember you may cancel with no cost to you, ( if you cancel no later then 2 days before the upcoming booked dates )  
(for a full refund or credit).

**THE MIAMI BEACH,  
FAMOUS LINCOLN ROAD MALL  
ANTIQUE & COLLECTIBLES SHOW**

MIAMI BEACH = DATES ARE IN BLUE:  
10 FT BY 10 FT TENTED = \$150.00

**October 2003**

S      M      T      W      T      F      S

**November 2003**

S      M      T      W      T      F      S

**December 2003**

S      M      T      W      T      F      S

**You keep this page  
for future reference**

**January 2004**

S      M      T      W      T      F      S

**February 2004**

S      M      T      W      T      F      S

**March 2004**

S      M      T      W      T      F      S

**April 2004**

S      M      T      W      T      F      S

**December 2003**

S      M      T      W      T      F      S

**KEEP THESE FOLLOWING PAGES    FOR FUTURE BOOKING & INFORMATION**

Page 3 of 5



## How to Book our Future Shows

You only have to send in the contract paper-work once per season, once we have your business information, full name, and contact info. You will then only have to mail in a check / money-order, with your full name, and telephone #, And which show or show dates you are booking,

**Please remember to mail in at least two weeks or more before the upcoming show dates,** and remember you may cancel with no cost to you if you cancel **no later then 2 days before the upcoming booked dates (for full refund or credit)**

**IMPORTANT: In the event of "late bookings", overnight the payment with Money Orders Only**

SINGLE SPACE FOR MIAMI BEACH SHOW = \$150.00 or (\$270.00 for double) in advance of show date

### **SEND ALL PAYMENTS TO:**

#### **MAILING ADDRESS:**

**Production Sud**

**P.O. Box 191943**

**Miami Beach, FL 33139**

#### **BUSINESS PHONE:**

**(305) 673-4991**

Website at: <http://www.antiquecollectiblemarket.com> **(download all contracts, and visitor info)**

**SETUP TIME:** Is 7:00 to 8:00 am. You must be setup, with trucks parked by 9:00 am. Selling hours are from approximately 9:00am thru 5:00 pm. Breakdown Miami Beach is 5:00pm.

**CANCELLING SHOW:** We reserve the right to cancel the show, if we feel the weather looks bad, winds, hurricanes, and cold could/may result in harm or injury to our exhibitors, & employees, etc... Full credit would be given towards a future show/date(s). In the rare event of a "Full Cancellation" we will contact all contracted clients by phone no later than (48) hours before the show date. We would also always announce Any Changes on Our Production Sud Answering Machine Voice Mail.

**HOW YOU "THE EXHIBITOR" CAN CANCEL WITHOUT LOSING YOUR PAYMENT:** Please call to verify cancellation **no later that (48) hours before the scheduled show/date** to obtain a refund or credit for a future show/date.

**FOOD:** There are many great restaurants and cafes on every block, coffee, snacks, lunch, etc. etc. **CLEANUP:** All vendors are instructed to take their own garbage with them. Please be respectful of this beautiful city we live in. Pitch in, Help Clean Up! Messy irresponsible dealers will be removed from future show/dates.

**RAIN POLICY:** Show/dates, if not previously canceled, will go on rain or shine. Just in case. **Always come prepared!** We suggest, plastic painter's drop cloths/sheets, & some clothes pins. **You May CANCEL (48 HOURS) AT THE LATEST FOR A FULL CREDIT OR REFUND.**

Due to past and present City fee's, before show dead-lined advertisings costs, and general setup of many show costs **We have no 1/2 credit for rained out shows "as in the past years". (you must make that call 48 hours before!)**

**RESTROOMS:** There will be Portasans conveniently placed by Production Sud.

**SECURITY:** Uniformed Police Officer/s will be on hand, in addition to a staff of (2) provided by Production Sud. However, please be advised shows are in large cities. All Exhibitors' are asked to use their own discretion in providing personal safety as they would in any other urban environment. (Watch your valuables, & money, etc.)

**LOADING & UNLOADING SPACES:** The shows are all located in well traveled areas at each city there are drive-up, loading/unloading areas located near Public parking areas which are suitable for large furniture, etc. The 3 Shows are well traveled by the entire crowds of buyers, tourists, & spectators alike, there are no "non-traveled spaces" due to a compact, and centrally well located show we provide.

**TENT, LOCATION:** Production Sud solely decides the layout of space(s) and the location(s) of all booked dealers, based on space, availability, & Antique & Collectable Items presented for sale, etc. You may suggest the area where you'd like to be located we will try to accommodate you when ever possible.

( SEE PAGE # 5, FOR DIRECTIONS TO ALL OUR SHOW LOCATIONS )

Page 4 of 5

## **DIRECTIONS: TO THE MIAMI BEACH, LINCOLN ROAD SHOW**

### **DIRECTIONS: FROM THE NORTH:**

Take Florida to 1-95 South, to 195 East (Julia Tuttle Causeway) To Alton Road South (right lane), Take Alton Road to 17th Street make a left. Continue on 17th Street.

Then make a right on Drexel Ave. (You've arrived)

A large public parking area is available on Drexel Ave. & 17th Street.

### **DIRECTIONS: FROM THE SOUTH:**

Take Florida to 1-95 North, to 836 East (Mac Arthur Causeway) to Alton Road North (left lane), Take Alton Road North to 17th Street make a right. Continue on 17th Street.

Then make a left on Drexel Ave. (You've arrived)

A large public parking area is available on Drexel Ave. & 17th Street.

### **MAILING ADDRESS:**

**PRODUCTION SUD**

P.O. BOX 191943

MIAMI BEACH, FL 33139

### **BUSINESS PHONE:**

**(305) 673-4991**

WEB ADDRESS: <http://www.antiquecollectiblemarket.com>

(DOWNLOAD OUR CONTRACTS AND ALL SHOW INFORMATION

(LET'S HAVE ANOTHER WONDERFUL SEASON!)

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